# Next scheduled Committee Meeting will be held in the Multi-Purpose Room, 201 Spring Street, Springdale, Arkansas

- The next Committee meeting September 16, 2019
  - Committee agendas will be available on Friday, September 13, 2019.

#### SPRINGDALE CITY COUNCIL REGULAR MEETING TUESDAY, SEPTEMBER 10<sup>th</sup>, 2019

5:55 p.m. Pre Meeting Activities

Pledge of Allegiance Invocation – Mike Lawson

6:00 p.m. OFFICIAL AGENDA

- 1. Large Print agendas are available.
- 2. Call to Order Mayor Doug Sprouse
- 3. Roll Call Denise Pearce, City Clerk

Recognition of a Quorum.

4. Comments from Citizens

The Council will hear brief comments from citizens during this period on issues not on the Agenda. No action will be taken tonight. All comments will be taken under advisement.

- 5. Approval of Minutes August 27<sup>th</sup>, 2019 Pg. 3 13
- 6. Procedural Motions
  - A. Entertain Motion to read all Ordinances and Resolutions by title only.
  - B. Entertain Motion to dispense with the rule requiring that ordinances be fully and distinctly read on three (3) different days for ordinances listed on this agenda as *item numbers*. **9A-C, 12A-B.** Motion must be approved by two-thirds (2/3) of the council members).
- 7. Finance Committee Report and Recommendation by Chairman Jeff Watson:
  - A. <u>A Resolution</u> amending the 2019 Budget of the City of Springdale Street Department. Item presented by Jeff Watson, Chairman. Pg. 14 15
  - B. <u>A Resolution</u> authorizing the Acquisition of Three Properties on Spring Street Project No. CP905. Presented by Jeff Watson, Chairman. Pg. 16 17
- 8. Police and Fire Committee Report and Recommendation by Chairman Amelia Williams:
  - <u>A Resolution</u> authorizing the execution of a Construction Manager contract for Fire Department Training Facility, Project No. 18BPF6. Resolution presented by Amelia Williams, Chairman. Pg. 18 36
- 9. Health, Sanitation and Property Maintenance Committee Report and Recommendation by Chairman Brian Powell:
  - A. <u>An Ordinance</u> ordering the razing (demolition) and removal of a certain residential structure within the City of Springdale, Arkansas, located at 1201 N. Jefferson St; to declare and emergency and for other purposes. Ordinance presented by Ernest Cate, City Attorney. Pg. 37 38
  - B. <u>An Ordinance</u> authorizing the City Clerk to file a lien for the razing and removal of structure within the City of Springdale, Arkansas, located at 422 Caudle Avenue. Ordinance presented by Ernest Cate, City Attorney. Pg. 39 46
  - C. <u>An Ordinance</u> authorizing the City Clerk to file a Clean-Up Lien for the removal of overgrown brush and debris on property located within the City of Springdale, Washington County, Arkansas. Ordinance presented by Ernest Cate, City Attorney. Pg. 47 54

- 10. Streets and Capital Improvement Report and Recommendation by Chairman Rick Evans:
  - <u>A Resolution</u> authorizing the Mayor and City Clerk to execute a memorandum of Understanding with the City of Elm Springs, Arkansas, pertaining to the Gene George Boulevard widening Bleaux Avenue to Elm Springs Road Project #18BPS1. Ordinance presented by Ernest Cate, City Attorney. Pg. 55 57
- 11. Parks and Recreation Committee Report and Recommendation by Chairman Mike Lawson:
  - <u>A Resolution</u> authorizing the execution of a Construction Manager Contract for Luther George Park, Project No. CP1906. Resolution presented by Mike Lawson, Chairman. Pg. 58 76
- 12. Ordinance Committee Report and Recommendation by Chairman Mike Overton:
  - A. <u>An Ordinance</u> amending Ordinance No. 5068 annexing certain property into the City of Springdale, Washington County, Arkansas. Ordinance presented by Ernest Cate, City Attorney. Pg. 77 85
  - B. <u>An Ordinance</u> annexing certain real property to the City of Springdale, Arkansas, pursuant to ARK. CODE ANN. §14-40-2002, and making a commitment to make municipal services available to said property as required by ARK. CODE ANN. §14-40-2002. Pg. 86 91
- 13. Comments from Department Heads.
- 14. Comments from Council Members.
- 15. Comments from City Attorney.
- 16. Comments from Mayor.
- 17. Adjournment.

The City Council of the City of Springdale met in regular session on Tuesday, August 27, 2019, in the City Council Chambers, City Administration Building. Mayor Doug Sprouse called the meeting to order at 6:00 p.m.

Roll call was answered by:

Doug SprouseMayorAmelia WilliamsWard 3Jeff WatsonWard 3Mike OvertonWard 2

Colby Fulfer Ward 1 (Absent)

Mike Lawson Ward 4

Rick Evans Ward 2 (Absent)

Brian Powell Ward 1
Kathy Jaycox Ward 4
Ernest Cate City Attorney
Danies Page City Clark/T

Denise Pearce City Clerk/Treasurer

Department heads present:

Mike Irwin Fire Chief
Ron Hritz Police Captain
Patsy Christie Planning Director

Wyman Morgan
Chad Wolf
Parks & Recreation Director
Brad Baldwin
Ron Findley
Neighborhood Services Director

Courtney Kremer Animal Services Director

Mike Chamlee Buildings Director

#### **CITIZENS COMMENTS**

Kendall Walker, Lisa Davidson and Fadil Bayarri were present at City Council expressing concern with the Fitzgerald Cemetery located off Old Wire Road not being maintained.

Mayor Sprouse explained the City of Springdale does not own this cemetery. The issue is the city will not be able to take care of every cemetery that is not being kept up.

Mr. Bayarri said in the year 2000 he bought 20 lots and endowed them to the Islamic Center in Fayetteville. Someone has been mowing the cemetery in the past but he has found out it was a volunteer and he has since moved out of town. He suggested the city take it over since there is no ownership there anymore and the Islamic Center would be glad to write a check every year for the maintenance.

Mayor Sprouse suggested getting a price from a company that will be maintaining Bluff Cemetery and see what they will charge to maintain Fitzgerald. We would have to look into how this can be taken care of by the city if we don't own it.

#### **APPROVAL OF MINUTES**

Council Member Jaycox moved the minutes of the August 13, 2019 City Council meeting be approved as presented. Council Member Powell made the second.

There was a voice vote of all ayes and no nays.

#### ORDINANCES AND RESOLUTIONS READ BY TITLE ONLY

Council Member Jaycox made the motion to read all Ordinances and Resolutions by title only and to dispense with the rule requiring that ordinances be fully and distinctly read on

three (3) different days for all items listed on this agenda. Council Member Powell made the second.

The vote:

Yes: Jaycox, Williams, Watson, Overton, Lawson, Powell

No: None

ORDINANCE NO. 5408 — REZONING 2 ACRES OWNED BY KAREN J. HAMILTON LOCATED AT 3565 GUM LANE, FROM A-1 TO SF-2 AND DECLARING AN EMERGENCY AND FOR OTHER PURPOSES

Planning Director Patsy Christie presented an Ordinance rezoning 2 acres owned by Karen J. Hamilton located at 3565 Gum Lane, from A-1 to SF-2 and declaring an emergency and for other purposes.

Planning Commission recommended approval at their August 6, 2019 meeting.

After reading the title of the Ordinance, Council Member Jaycox moved the Ordinance "Do Pass". Council Member Powell made the second.

The vote:

Yes: Williams, Watson, Overton, Lawson, Powell, Jaycox

No: None

Council Member Jaycox moved the Emergency Clause be adopted. Council Member Lawson made the second.

The vote:

Yes: Watson, Overton, Lawson, Powell, Jaycox, Williams

No: None

The Ordinance was numbered 5408.

ORDINANCE NO. 5409 – REZONING 3 ACRES OWNED BY LORI BOLEN LOCATED SOUTH OF EAST DON TYSON PARKWAY (PARCEL #815-29339-121), FROM A-1 TO SF-2 AND DECLARING AN EMERGENCY AND FOR OTHER PURPOSES

Planning Director Patsy Christie presented an Ordinance rezoning 3 acres owned by Lori Bolen located south of East Don Tyson Parkway (Parcel #815-29339-121), from A-1 to SF-2 and declaring an emergency and for other purposes.

Planning Commission recommended approval at their August 6, 2019 meeting.

After reading the title of the Ordinance, Council Member Jaycox moved the Ordinance "Do Pass". Council Member Powell made the second.

The vote:

Yes: Overton, Lawson, Powell, Jaycox, Williams, Watson

No: None

Council Member Powell moved the Emergency Clause be adopted. Council Member Jaycox made the second.

The vote:

Yes: Lawson, Powell, Jaycox, Williams, Watson, Overton

No: None

The Ordinance was numbered 5409.

NO. 82-19 – APPROVING A WAIVER OF RESOLUTION IMPROVEMENTS, DRAINAGE, CURBS, GUTTERS AND SIDEWALKS AS SET FORTH IN ORDINANCE NO. 3725 TO KAREN HAMILTON

Planning Director Patsy Christie presented a Resolution approving a waiver of street improvements, drainage, curbs, gutters and sidewalks to Karen Hamilton in connection with a single family dwelling at 3565 Gum as set forth in Ordinance No. 3725.

Planning Commission recommended approval at their August 6, 2019 meeting.

After discussion on sidewalks, Council Member Powell moved the Resolution be adopted with Option 1. Council Member Lawson made the second.

#### RESOLUTION NO.

A RESOLUTION APPROVING A WAIVER OF STREET IMPROVEMENTS, DRAINAGE, CURBS, **GUTTERS** SIDEWALKS AS SET FORTH IN ORDINANCE NO. 3725 TO KAREN HAMILTION IN CONNECTION WITH A SINGLE FAMILY DWELLING AT 3565 GUM LANE

WHEREAS, Ordinance #3047 provides for the waiver of street improvements, drainage relating thereto, curbs, gutters and sidewalks to be first heard by the Planning Commission and a recommendation made to the City Council, with any waivers to be granted by the City Council only; and

WHEREAS, the Planning Commission reviewed a request for waiver of street improvements to including drainage improvements related thereto, sidewalks in connection with a single family dwelling for Karen Hamilton and the Planning Commission recommends approval of the waiver request subject to a Bill of Assurance.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SPRINGDALE, that the City Council hereby:

Option 1: Grants a waiver of street improvements to Gum Lane including drainage improvements related thereto, sidewalks in connection with a single family dwelling for Karen Hamilton.

PASSED AND APPROV	ED THISDAY OF August, 2019.	
	Doug Sprouse, Mayor	
ATTEST:		
Denise Pearce City Clerk		

PASSED AND APPROVED THIS

APPROVED AS TO FORM:
Ernest Cate, City Attorney
The vote:
Yes: Powell, Jaycox, Williams, Watson, Overton, Lawson
No: None
The Resolution was numbered <u>82-19</u> .
RESOLUTION NO. 83-19 – APPROVING A CONDITIONAL USE APPEAL BY LORI BOLEN FOR PROPERTY LOCATED SOUTH OF E. DON TYSON PARKWAY (PARCEL #815-29339-121) FOR A TANDEM LOT SPLIT
Planning Director Patsy Christie presented a Resolution approving a conditional use appeal by Lori Bolen for property located south of E. Don Tyson Parkway (Parcel#815-29339-121) for a tandem lot split.
Planning Commission recommended approval at their August 6, 2019 meeting.
RESOLUTION NO
A RESOLUTION APPROVING A CONDITIONAL USE FOR LORI BOLEN FOR PARCEL #815-29339-121 AS SET FORTH IN ORDINANCE NO. 4030
WHEREAS, Ordinance #4030 amending Chapter 130 (Zoning Ordinance) of the Springdale Code of Ordinance provides that an application for a conditional use on appeal must be heard first by the Planning Commission and a recommendation made to the City Council; and
WHEREAS, the Planning Commission held a public hearing on August 6, 2019, on a request by Lori Bolen for a tandem lot split in an Agricultural District (A-1).
<b>WHEREAS,</b> following the public hearing the Planning Commission by a vote of seven (7) yeas and zero (0) nays.
NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SPRINGDALE, that the City Council hereby grants a conditional use to Lori Bolen for a tandem lot split in an Agricultural District (A-1) for parcel #815-29339-121.
PASSED AND APPROVED THIS DAY OF August, 2019.
Doug Sprouse, Mayor
ATTEST:
Denise Pearce, City Clerk
APPROVED AS TO FORM:
Ernest Cate, City Attorney
Council Member Jaycox moved the Resolution be adopted. Council Member Powell made the second.

The vote:

Yes: Jaycox, Williams, Watson, Overton, Lawson, Powell

No: None

The Resolution was numbered 83-19.

ORDINANCE NO. 5410 – AMENDING VARIOUS PROVISIONS OF CHAPTER 70 OF THE CODE OF ORDINANCES OF THE CITY OF SPRINGDALE, ARKANSAS, TO MAKE TECHNICAL CORRECTIONS; TO DECLARE AN EMERGENCY AND FOR OTHER PURPOSES

Council Member Mike Overton presented an Ordinance amending various provisions of the Code of Ordinances of the City of Springdale, Arkansas, to make technical corrections to Chapter 70 of the Code of Ordinances; to declare an emergency and for other purposes.

Chapter 70 of the Code of Ordinances of the City of Springdale, Arkansas, contains the regulations pertaining to "Municipal Court" in the City of Springdale and is in need of revision, as Arkansas law has changed regarding the creation, existence, and duties of "municipal courts", and has instead established State District Courts. Several other provisions of the Code of Ordinances need to be amended to make reference to the correct court of law.

After reading the title of the Ordinance, Council Member Jaycox moved the Ordinance "Do Pass". Council Member Powell made the second.

The vote:

Yes: Williams, Watson, Overton, Lawson, Powell, Jaycox

No: None

Council Member Jaycox moved the Emergency Clause be adopted. Council Member Powell made the second.

The vote:

Yes: Watson, Lawson, Powell, Jaycox, Williams

No: Overton

The Emergency Clause did not pass.

The Ordinance was numbered 5410.

# ORDINANCE NO. 5411 – WAIVING COMPETITIVE BIDDING FOR THE PURCHASE OF EMPLOYEE INSURANCE COVERAGE

Council Member Jeff Watson presented an Ordinance waiving competitive bidding for the purchase of employee insurance coverage.

The City of Springdale has provided health insurance for its employees through Arkansas Blue Cross Blue Shield since January 1, 2007. Arkansas Blue Cross Blue Shield has proposed to continue coverage for City of Springdale employees with no increase in the premium. The rates for dental insurance with Delta Dental will remain the same and there is no change in the rate for vision insurance or life and AD&D insurance or long term disability.

The City's 2020 contribution into the employees' health savings account will be made in two equal payments with the first payment in January and the second payment in July.

After reading the title of the Ordinance, Council Member Jaycox moved the Ordinance "Do Pass". Council Member Powell made the second.

The vote:

Yes: Overton, Lawson, Powell, Jaycox, Williams, Watson

No: None

Council Member Powell moved the Emergency Clause be adopted. Council Member Jaycox made the second.

The vote:

Yes: Lawson, Powell, Jaycox, Williams, Watson, Overton

No: None

The Ordinance was numbered 5411.

ORDINANCE NO. 5412 – AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO AN AGREEMENT WITH BURTON CEMETERY SERVICE FOR THE CARE AND MAINTENANCE OF BLUFF CEMETERY; TO WAIVE COMPETITIVE BIDDING; TO DECLARE AN EMERGENCY AND FOR OTHER PURPOSES

Council Member Jeff Watson presented an Ordinance authorizing the Mayor and City Clerk to enter into an agreement with Burton Cemetery Service for the care and maintenance of Bluff Cemetery; to waive competitive bidding and declaring an emergency and for other purposes.

The City of Springdale Public Works Department currently has funds budgeted for the care and maintenance of Bluff Cemetery. Burton Cemetery Service has provided the Public Works Department with a proposal pertaining to the care and maintenance of Bluff Cemetery, including weekly maintenance, mowing, trimming, removal of trash and debris, general upkeep, and the opening and closing of graves.

The initial term of this Agreement shall be for a period of one (1) year from the date of this Agreement. This Agreement shall automatically renew for successive one (1) year terms, unless either party shall provide written notice to the other of its intent not to renew this Agreement, said notice must be given at least sixty (60) days prior to the expiration of the current one (1) year term. Unless otherwise agreed to by the parties, a renewal of this Agreement shall be upon the same terms and conditions as stated herein.

After reading the title of the Ordinance, Council Member Jaycox moved the Ordinance "Do Pass". Council Member Powell made the second.

The vote:

Yes: Powell, Jaycox, Williams, Watson, Overton, Lawson

No: None

Council Member Powell moved the Emergency Clause be adopted. Council Member Lawson made the second.

The vote:

Yes: Jaycox, Williams, Watson, Overton, Lawson, Powell

No: None

The Ordinance was numbered <u>5412</u>.

RESOLUTION NO. 84-19 – ACCEPTING THE GUARANTEED MAXIMUM PRICE FOR THE CONSTRUCTION OF SPRINGDALE'S ANIMAL SHELTER (PROJECT NO. 18BPA1)

Council Member Jeff Watson presented a Resolution accepting the guaranteed maximum price for the construction of the Springdale Animal Shelter (Project No. 18BPA1).

Nabholz Construction Corporation has proposed a guaranteed maximum price of \$4,715,603 for the construction of the Springdale Animal Shelter.

#### RESOLUTION NO. \_\_\_\_

A RESOLUTION ACCEPTING THE GUARANTEED MAXIMUM PRICE FOR THE CONSTRUCTION OF SPRINGDALE'S ANIMAL SHELTER (PROJECT NO. 18BPA1)

WHEREAS, Arkansas Statute 19-11-801 provides for the employment of a construction manager for public improvement projects, and

WHEREAS, Springdale's Animal Shelter has been designed and bids taken from sub-contractors, and

WHEREAS, Nabholz Construction Corporation has proposed a guaranteed maximum price of \$4,715,603 for the construction of Springdale's Animal Shelter.

# NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, that

- 1. The City Council accepts the guaranteed maximum price of \$4,715,603 submitted by Nabholz Construction Corporation for the construction of Springdale's Animal Shelter.
- 2. The Mayor is authorized to approve construction change orders as long as the cumulative total of the change orders does not exceed 10% of the guaranteed maximum price.

PASSED AND APPROVED this	day of August, 2019.
ATTEST:	Doug Sprouse, Mayor
Denise Pearce, City Clerk	
APPROVED AS TO FORM:	
Ernest B. Cate, City Attorney	
Council Member Jayaay mayad the Develop	4. 1 1 (1 0 1)

Council Member Jaycox moved the Resolution be adopted. Council Member Lawson made the second.

The vote:

Yes: Watson, Overton, Lawson, Powell, Jaycox

No: Williams

The Resolution was numbered <u>84-19</u>.

RESOLUTION NO. 85-19 – APPROPRIATING FUNDS FOR THE PARKS AND RECREATION DEPARTMENT (PROJECT NO. 1BPP5) – PERTAINING TO THE INSTALLATION OF NETTING AND LIGHTING AT TWO INDOOR SOCCER FIELDS AT THE PARKS AND RECREATION CENTER

Council Member Mike Lawson presented a Resolution appropriating funds for the Parks and Recreation Department (Project No. 1BPP5), pertaining to the installation of netting and lighting at two indoor soccer fields at the Parks and Recreation Center.

#### RESOLUTION NO.

# A RESOLUTION APPROPRIATING FUNDS FOR THE PARKS AND RECREATION DEPARTMENT (PROJECT NO. 18BPP5)

WHEREAS, the City of Springdale is in the process of making improvements to the Parks & Recreation Center and desire to install netting on two soccer fields at a cost of \$9,397 plus tax, and

**WHEREAS**, the City would also like to replace the lighting over the two soccer fields at a cost of \$15,899.10 plus tax, and.

WHEREAS, the 2019 Parks budget does not include sufficient funds for these items.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, that there is hereby appropriated \$29,000 from the 2018 Park Bond Construction Fund for the purchase and installation of lighting for the Parks and Recreation indoor soccer fields and netting for the same soccer fields.

day of August 2010

	day of August, 2019.
ATTEST:	Doug Sprouse, MAYOR
Denise Pearce, CITY CLERK	
APPROVED AS TO FORM:	
Ernest B. Cate, CITY ATTORNEY	

Council Member Jaycox moved the Resolution be adopted. Council Member Powell made the second.

The vote:

Yes: Watson, Overton, Lawson, Powell, Jaycox, Williams

PASSED AND APPROVED this

No: None

The Resolution was numbered 85-19.

RESOLUTION NO. 86-19 – AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A RAILROAD CROSSING EASEMENT AGREEMENT AND RAILROAD CROSSING COST AGREEMENT WITH THE ARKANSAS & MISSOURI ROADROAD COMPANY (AMRR) AS PART OF THE MAPLE AVENUE EXTENSION (PROJECT #18BPS2)

Council Member Jeff Watson presented a Resolution authorizing the Mayor and City Clerk to enter into a Railroad Crossing Easement Agreement and Railroad Crossing Cost Agreement with the Arkansas & Missouri Railroad Company (AMRR) as part of the Maple Avenue Extension (Project #18BPS2).

## RESOLUTION NO. \_\_\_\_

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A RAILROAD CROSSING EASEMENT AGREEMENT AND RAILROAD CROSSING COST AGREEMENT WITH THE ARKANSAS & MISSOURI RAILROAD COMPANY (AMRR) AS PART OF THE MAPLE AVENUE EXTENSION (PROJECT 18BPS2).

WHEREAS, the City of Springdale, Arkansas, is undertaking the extension of Maple Avenue from Holcomb Street to Park Street (Project 18BPS2);

WHEREAS, as part of this project, a new railroad crossing will be constructed on Maple Avenue;

WHEREAS, the City and AMRR wish to enter into a Railroad Crossing Easement Agreement and Railroad Crossing Cost Agreement, both of which are attached hereto and incorporated by reference, to provide for the construction of the new railroad crossing as part of the Maple Avenue Extension (Project 18BPS2), the cost of which will be included in the overall budget for this project;

WHEREAS, AMRR has agreed to the terms of the attached Railroad Crossing Easement Agreement and the attached Railroad Crossing Cost Agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS that the Mayor and City Clerk are hereby authorized to execute the Railroad Crossing Easement Agreement and Railroad Crossing Cost Agreement, both attached hereto, with the Arkansas & Missouri Railroad Company, both relating to the construction of a new railroad crossing as part of the Maple Avenue Extension Project (18BPS2).

PASSED AND APPROVED this	day of August, 2019.				
	Doug Sprouse, Mayor				
ATTEST:					
Denise Pearce, City Clerk	-				
APPROVED AS TO FORM:					
Ernest B. Cate, City Attorney					

Council Member Jaycox moved the Resolution be adopted. Council Member Overton made the second.

The vote:

Yes: Overton, Lawson, Powell, Jaycox, Williams, Watson

No: None

The Resolution was numbered <u>86-19</u>.

ORDINANCE NO. 5413 – AUTHORIZING THE CITY CLERK TO FILE A CLEAN UP LIEN FOR THE REMOVAL OF OVERGROWN BRUSH AND DEBRIS ON PROPERTY LOCATED AT 307 S. CLEVELAND ST. AND E. EMMA AVENUE WITHIN THE CITY OF SPRINGDALE, WASHINGTON COUNTY, ARKANSAS

City Attorney Ernest Cate presented an Ordinance authorizing the City Clerk to file a clean-up lien for the removal of overgrown brush and debris on property located at 307 S. Cleveland Street and E. Emma Avenue within the City of Springdale, Washington County, Arkansas.

Izom Estates owns 307 S. Cleveland Street and Charles Earl Gray owns the property on E. Emma Avenue.

After reading the title of the Ordinance, Council Member Jaycox moved the Ordinance "Do Pass". Council Member Lawson made the second.

The vote:

Yes: Lawson, Powell, Jaycox, Williams, Watson, Overton

No: None

Council Member Jaycox moved the Emergency Clause be adopted. Council Member Lawson made the second.

The vote:

Yes: Powell, Jaycox, Williams, Watson, Overton, Lawson

No: None

The Ordinance was numbered 5413.

#### **PUBLIC MEETING**

A public meeting will be held on Thursday, August 29, 2019, from 4:00 - 6:00 p.m., to discuss streetscape.

#### **COMMITTEE MEETING**

Council decided to hold the next committee meeting on Tuesday, September 3, 2019, at 5:30 p.m. due to the Labor Day Holiday.

Council Member Watson asked for a report to be made on the city street turnback funds at that meeting.

#### **ADJOURNMENT**

Council Member Jaycox made the motion to adjourn. Council Member Powell made the second.

After a voice vote of all ayes and no nays, the meeting adjourned at 6:50 p.m.

	Doug Sprouse, Mayor	
Denise Pearce, City Clerk/Treasurer		

R	E	30	O		U	T	ľ	O	1	V	ì	V	O			
		_	_	$\overline{}$	_	_	_	-	-	-		_	-	-		

## A RESOLUTION AMENDING THE 2019 BUDGET OF THE CITY OF SPRINGDALE STREET DEPARTMENT

WHEREAS, the 2019 Public Works Budget needs to be amended to allocate funds from an insurance settlement for damage to street signalization equipment; and

WHEREAS, there is a need to include these funds in the 2019 budget for traffic signalization supplies and equipment and a budget adjustment has been requested by the Public Works Department;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, that the 2019 budget of the City of Springdale Public Works Department is hereby amended as follows: ORIGINAL

INCREASE

201-0201-397.00-00 201-0204-431.60-54 201-0204-431.80-35	INSURANCE RECOVERIES SUPPLIES / SIGNALIZATION CAPITAL / TRAFFIC SIGNALS	BUDGET 0 35,000 450,000	(DECREASE) 41,600 7,000 34,600	BUDGET 41,600 42,000 484,600
PASSED AND A	PPROVED this	day of Au	gust, 2019.	
ATTEST	D	oug Sprouse	, Mayor	
Denise Pearce, (	City Clerk			
APPROVED AS	TO FORM:			

Ernest B. Cate, City Attorney



## MEMORANDUM

DATE:

August 28, 2019

TO:

Springdale City Council

FROM:

Wyman Morgan

Wom

Administration and Financial Services Director

Subject:

Appraisals for Property on Spring Street

We have received appraisals for the properties across the street that you authorized me to obtain and they are:

418 Spring Street 316 Spring Street

\$ 80,000.00 \$ 360,000.00

214 Spring Street

\$ 230,000.00

Total:

\$ 670,000.00

Proceeds from the sale of city owned properties on Spring Street.

Spring Street Properties sold:

\$ 996,880.00

Appraisal Costs: (\$2,500.00 each)

\$ 7,500.00

Leaving a balance of:

\$ 989,380.00

<b>RESOI</b>	LUTION	NO.	

## A RESOLUTION AUTHORIZING THE ACQUISITION OF THREE PROPERTIES ON SPRING STREET PROJECT NO. CP1905

WHEREAS, the City of Springdale has started construction of the new Criminal Justice Complex on Spring Street, and

WHEREAS, the plans for the improvements to the municipal campus on Spring Street include improvements to Spring Street, new parking facilities and additional green space, and;

WHEREAS, the plans for the construction of these improvements anticipates the acquisition of the properties located at 214, 316 and 418 Spring Street, and

WHEREAS, appraisals have been obtained to determine the fair market value of these properties

# NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, that

**Section 1**. The City Council hereby authorizes the acquisition of the properties located at 214, 316 and 418 Spring Street according to the guidelines and procedures in the Springdale Land Acquisition Policy adopted by the City Council..

Section 2. The costs of these acquisitions shall be paid from the proceeds from the sale of two City owned properties on Spring Street.

**Section 3**. The Mayor is hereby authorized to institute eminent domain proceedings in any instance that an agreement has not been reached with the property owner regarding the amount of just compensation to be paid for the acquisition of these properties. Any settlement proposed by the Mayor that exceeds the appraised value will be presented to the City Council for approval.

PASSED AND APPROVED this 10<sup>th</sup> day of September, 2019

ATTEST:	Doug Sprouse, Mayor
Denise Pearce, City Clerk	
APPROVED AS TO FORM:	
Ernest B. Cate, City Attorney	



# MEMORANDUM

DATE:

August 28, 2019

TO:

Springdale City Council

FROM:

Wyman Morgan

Wom

Administration and Financial Services Director

Subject:

Appraisals for Property on Spring Street

We have received appraisals for the properties across the street that you authorized me to obtain and they are:

 418 Spring Street
 \$ 80,000.00

 316 Spring Street
 \$ 360,000.00

 214 Spring Street
 \$ 230,000.00

Total:

\$670,000.00

Proceeds from the sale of city owned properties on Spring Street.

Spring Street Properties sold:

\$ 996,880.00

Appraisal Costs: (\$2,500.00 each)

\$ 7,500.00

Leaving a balance of:

\$ 989,380.00

RESOLUTION NO.	•
----------------	---

# A RESOLUTION AUTHORIZING THE EXECUTION OF A CONSTRUCTION MANAGER CONTRACT FOR FIRE DEPARTMENT TRAINING FACILITY PROJECT NO. 18BPF6

WHEREAS, Arkansas Statute 19-11-801 provides for the employment of a construction manager for public improvement projects, and

WHEREAS, Flintco, LLC has been recommended by the Mayor to serve as construction manager for the construction of a Fire Department Training Facility, and

WHEREAS, Flintco, LLC has agreed to furnish preconstruction services at no charge and construction services for 5.5% of construction costs.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, that the Mayor is hereby authorized to execute a contract for construction manager services with Flintco, LLC for services to be provided relating to construction of a training facility for the Fire Department.

PASSED AND APPROVED this 10<sup>th</sup> day of September, 2019.

ATTEST:	Doug Sprouse, Mayor
Denise Pearce, City Clerk	
APPROVED AS TO FORM:	
Ernest B. Cate, City Attorney	



## Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the 19th day of August in the year 2019 (In words, indicate day, month and year.)

BETWEEN the Owner: (Name, legal status and address)

City of Springdale, Arkansas 201 Spring Street Springdale, AR 72764

and the Construction Manager: (Name, legal status and address)

Flintco, Limited Liability Company 184 E. Fantinel Blvd Springdale, AR 72762

for the following Project: (Name and address or location)

Springdale Fire Training Facility 2398 Tumbow Ave. Springdale, AR 72764

The Architect: (Name, legal status and address)

Crafton Tull 901 N 47th Street, Suite 200 Rogers, AR 72756

The Owner's Designated Representative: (Name, address and other information)

Mayor Doug Sprouse 201 Spring Street Springdale, AR 72764

The Construction Manager's Designated Representative: (Name, address and other information)

Brent Farmer 184 E. Fantinel Blvd Springdale, AR 72762

User Notes:

#### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information. and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

The Architect's Designated Representative: (Name, address and other information)

Mark Owings 901 N 47th Street, Suite 200 Rogers, AR 72756

The Owner and Construction Manager agree as follows.

#### TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES
- 3 OWNER'S RESPONSIBILITIES
- 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
- 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 6 COST OF THE WORK FOR CONSTRUCTION PHASE
- 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
- 8 INSURANCE AND BONDS
- 9 DISPUTE RESOLUTION
- 10 TERMINATION OR SUSPENSION
- 11 MISCELLANEOUS PROVISIONS
- 12 SCOPE OF THE AGREEMENT

#### **EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT**

#### ARTICLE 1 GENERAL PROVISIONS

#### § 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

#### § 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

#### § 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201<sup>TM</sup>–2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2007, which document is incorporated herein by reference. The term "Contractor" as used in A201–2007 shall mean the Construction Manager.

## ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

#### § 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

#### § 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

#### § 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

#### § 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

#### § 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the

Init

items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

#### § 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

#### § 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

## § 2.2 Guaranteed Maximum Price Proposal and Contract Time

- § 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.
- § 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.
- § 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

  A list of the Drawings and Specifications, including all Add at the construction of the Drawings and Specifications including all Add at the construction.
  - A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
  - .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
  - .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
  - .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
  - .5 A date by which the Owner must accept the Guaranteed Maximum Price.
- § 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.
- § 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.
- § 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following

lnit.

acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

- § 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.
- § 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.
- § 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

#### § 2.3 Construction Phase

#### § 2.3.1 General

- § 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.
- § 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

#### § 2.3.2 Administration

- § 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.
- § 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.
- § 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.
- § 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.
- § 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

- § 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201-2007.
- § 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.
- § 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

#### § 2.4 Professional Services

Section 3.12.10 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

#### § 2.5 Hazardous Materials

Section 10.3 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

## ARTICLE 3 OWNER'S RESPONSIBILITIES

#### § 3.1 Information and Services Required of the Owner

- § 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.
- § 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.
- § 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.
- § 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.
- § 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

- § 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.
- § 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.
- § 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

#### § 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

#### § 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133<sup>TM</sup>–2014, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

# ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES § 4.1 Compensation

- § 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:
- § 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2: (Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

No pre-construction fee for this project.

- § 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within N/A (months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.
- § 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

#### § 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

(2054442307)

lnit.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager. (Insert rate of monthly or annual interest agreed upon.)

5 % per annum

## ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

#### § 5.1.1 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

5.5% of the cost of work.

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

15%

1

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed ninety-five percent (95%) of the standard rate paid at the place of the Project.

#### § 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item TBD Units and Limitations

Price per Unit (\$0.00)

#### § 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner. (Insert specific provisions if the Construction Manager is to participate in any savings.)

100% of savings will be returned to Owner.

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

#### § 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

lnit.

- § 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.
- § 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.
- § 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.
- § 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

# ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE § 6.1 Costs to Be Reimbursed

- § 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.
- § 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

#### § 6.2 Labor Costs

- § 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.
- § 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel are included in the General Conditions and shall not be charged separately as part of labor costs. (If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)
- § 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work are included in the General Conditions and shall not be charged separately as part of labor costs.
- § 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.
- § 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

#### § 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

# $\S$ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

- § 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.
- § 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

## § 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

- § 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.
- § 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.
- § 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.
- § 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.
- § 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.
- § 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

#### § 6.6 Miscellaneous Costs

- § 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.
- § 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.
- § 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.
- § 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.
- § 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs

of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

- § 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.
- § 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.
- § 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.
- § 6.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

#### § 6.7 Other Costs and Emergencies

- § 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner. If the Construction Manager self-performs any scope of the work as a trade contractor, upon approval by the Owner, the scope of the work will be performed on a lump sum basis, and shall be paid on a percentage of completion basis according to the schedule of values provided by the Construction Manager on Applications for Payment.
- § 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.
- § 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.
- § 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

#### § 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

#### § 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received

(2054442307)

payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

#### § 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

#### § 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

## ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

#### § 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the 15th day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than twenty (20) days after the Architect receives the Application for Payment. (Federal, state or local laws may require payment within a certain period of time.)

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those

payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201–2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- Add the Construction Manager's Fee, less retainage of five percent (5%). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- Subtract retainage of five percent (5%) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;

Init.

- Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.
- § 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.
- § 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.
- § 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

#### § 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 15 days after the issuance of the Architect's final Certificate for Payment.

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

#### ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance as set forth in Article 11 of AIA Document A201–2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)

Type of Insurance or Bond Limit of Liability or Bond Amount (\$0.00)

Workers' Compensation Insurance Statutory Limits

Employers' Liability \$1,000,000 Each Accident \$1,000,000 Disease-Each Employee

\$1,000,000 Disease-Policy Limit

Commercial General Liability
including coverage for \$4,000,000 Each Occurrence
Premises-Operation, \$4,000,000 General Aggregate

Products-Completed Operations, Contractual Liability, Personal Injury and Broad Form Property Damage (including coverage for Explosion, Collapse and Underground hazards). Products and Completed Operations insurance shall be maintained for a period of two years from substantial completion, or Owner's use of the improvements, whichever is earlier. \$1,000,000 Personal and Advertising Injury \$4,000,000 Products-Completed Operations Aggregate

Automobile Liability (owned, non-owned and hired vehicles) for bodily injury and property damage.

\$1,000,000 Combined Single Limit

## Excess/Umbrella Liability

Umbrella/Excess Liability coverage is \$5,000,000 Aggregate to apply in excess of Commercial General Liability, Auto Liability and Employer's Liability

\$5,000,000 Each Occurrence \$5,000,000 Aggregate

#### ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

. 3	N.J	Arbitration pursuant to Section 15.4 of AIA Document A201–2007
<u>[</u>	]	Litigation in a court of competent jurisdiction
ĺ	]	Other: (Specify)

#### § 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker. (If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

#### ARTICLE 10 TERMINATION OR SUSPENSION

#### § 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

- Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

# § 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

(2054442307)

#### § 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

#### ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201-2007.

#### § 11.2 Ownership and Use of Documents

Section 1.5 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

#### § 11.3 Governing Law

Section 13.1 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

#### § 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

#### § 11.5 Other provisions:

TBD with GMP documents.

#### ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

## § 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007 (as amended), General Conditions of the Contract for Construction
- .3 AIA Document E201<sup>TM</sup>–2007, Digital Data Protocol Exhibit, if completed, or the following:
- .4 AIA Document E202™—2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
- .5 Other documents: (List other documents, if any, forming part of the Agreement.)

This Agreement is entered into as of the day and year firs	st written above.
	To be
OWNER (Signature)	CONSTRUCTION MANAGER (Signature)
Doug Sprouse, Mayor of Springdale (Printed name and title)	Brent Farmer, Vice President/Area Manager (Printed name and title)

lnit.

(2054442307)

u.
----

AN ORDINANCE ORDERING THE RAZING (DEMOLITION) AND REMOVAL OF A CERTAIN RESIDENTIAL STRUCTURE WITHIN THE CITY OF SPRINGDALE, ARKANSAS, LOCATED AT 1201 N. JEFFERSON ST.; TO DECLARE AN EMERGENCY AND FOR OTHER PURPOSES.

WHEREAS, Danny H. High, is the owner of certain real property situated in Springdale, Washington County, Arkansas, more particularly described as follows:

A part of the S 1/2 of the SE 1/4 of the SE 1/4 of Section 25, Township 18 North, Range 30 West, in Washington County, Arkansas, being more particularly described as follows, to-wit: From the SE corner of said Section 35, run West 8921.81 feet; thence North 5°40'12" East 779.62 feet to the POINT OF BEGINNING; thence North 4°29'17" East 80.9 feet; thence South 89°14'57" East 273.34 feet; thence South 01°16'52" West 80.75 feet; thence North 89°15'08" West 277.86 feet to the POINT OF BEGINNING, containing .51 acres, more or less.

Commonly known as 1201 N. Jefferson St., Springdale, Washington County, Arkansas

Tax Parcel No. 815-27905-000

WHEREAS, the structure on the property is unfit for human habitation, constitutes a fire hazard, otherwise is dangerous to human life, or constitutes a hazard to safety or health by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment, and further is unsightly, and is considered an unsafe and unsightly structure in violation of Springdale City Ordinances (§22-32 and §91-37, et seq.);

WHEREAS, the owner has been notified by the City of Springdale prior to the consideration of this ordinance, that the structure on the property is in violation of various ordinances of the City of Springdale, as well as the Property Maintenance Code of the City of Springdale;

WHEREAS, pursuant to Chapter 22-32 of the Ordinances of the City of Springdale, the owner was given thirty (30) days to purchase a building permit and to commence repairs on the property, or to demolish and remove the building from the property;

WHEREAS, the owner has failed, neglected, or refused to comply with the notice to repair, rehabilitate or to demolish and remove the building, and as such, the matter of removing the building may be referred to the City Council pursuant to Chapter 22 and Chapter 91 of the Ordinances of the City of Springdale;

WHEREAS, under Ark. Code Ann. § 14-56-203 and pursuant to Chapter 22 and Chapter 91 of the Springdale Code of Ordinances, if repair or removal is not done within the required time, the structure is to be razed (demolished) and/or removed;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS:

<u>Section 1</u>. That the structure located at 1201 N. Jefferson St., Springdale, Arkansas, is dilapidated, unsightly, and unsafe; and it is in the best interests of the City of Springdale to proceed with the removal of this dilapidated, unsightly, and unsafe structure.

Section 2. That the owner is hereby ordered to raze (demolish) and remove the dilapidated, unsightly and unsafe structure located on the aforesaid property; and, is further ordered to abate the unsightly conditions on the property. Said work shall be

commenced within ten (10) days and shall be completed within thirty (30) days from the passage of this ordinance. The manner of razing (demolishing) and removing said structure shall be to dismantle by hand or bulldoze and then dispose of all debris, completely cleaning up the property to alleviate any unsightly conditions, in a manner consistent with the Property Maintenance Code, and all other state laws and regulations pertaining to the demolition or removal of residential structures.

<u>Section 3</u>. If the aforesaid work is not commenced within ten (10) days or completed within thirty (30) days, the Mayor, or the Mayor's authorized representative, is hereby directed to cause the aforesaid structure to be razed (demolished) and removed and the unsafe, unsanitary and unsightly conditions abated; and, the City of Springdale shall have a lien upon the aforesaid described real property for the cost of razing (demolishing) and removing said structure and abating said aforementioned conditions, said costs to be determined at a hearing before the City Council.

Section 4. EMERGENCY CLAUSE: The City Council hereby determines that the aforesaid unsafe structure constitutes a continuing detriment to the public safety and welfare and is therefore a nuisance, and determines that unless the provisions of this ordinance are put into effect immediately, the public health, safety and welfare of the citizens of Springdale will be adversely affected. Therefore, an emergency is hereby declared to exist and this ordinance begin necessary for the public health, safety and welfare shall be in full force and effect from and after its passage and approval.

day of Sontombor 2010

PASSED AND APPROVED this

THE SECOND AND AN A PROVED	day of Deptember,	2019.
	MAYOR	
ATTEST:		
CITY OF EDIA	27	
CITY CLERK		
APPROVED AS TO FORM:		
Enter		
CITY ATTORNEY		

ORDINANCE NO.	
AN ORDINANCE AUTHORIZING THE CITY CLERK TO FILE A LIEN FOR THE RAZING AND REMOVAL OF A STRUCTURE WITHIN THE CITY OF SPRINGDALE, ARKANSAS, LOCATED AT 422 CAUDLE AVE.	
WHEREAS, Lakeview Loan	

Servicing, LLC is the owner of certain real property situated in Springdale, Washington County, Arkansas, more particularly described as follows:

WHEREAS, on March 12, 2019, the City Council for the City of Springdale, Arkansas, passed Ordinance No. 5364, ordering the owner of 422 Caudle Ave. to raze (demolish) and remove the dilapidated, unsightly and unsafe structure located on the aforesaid property, and was further ordered to abate the unsightly conditions on the property;

The North 55 feet of Lot Numbered 17 and the West 14 feet of the remainder of said Lot, in Block I in the H.C. Waggoner Addition to the City of Springdale, as designated upon the recorded plat of said Addition.

WHEREAS, Ordinance No. 5364 provided that said work was to be commenced within ten (10) days and was to be completed within thirty (30) days from the passage of the ordinance, and that if the work was not commenced within ten (10) days or completed within thirty (30) days, the Mayor, or the Mayor's authorized representative, were directed to cause the aforesaid structure to be razed (demolished) and removed and to abate the unsafe, unsanitary, and unsightly conditions on the property;

WHEREAS, Lakeview Loan Servicing, LLC, after being given proper notice of Ordinance No. 5364, and after being given adequate time to abate the situation on the property, failed to remove the dilapidated, unsightly and unsafe structure located on the aforesaid property, and failed to abate the unsightly conditions on the property;

WHEREAS, pursuant to Ordinance No. 5364, the Mayor's authorized representative caused the aforesaid structure to be razed (demolished) and removed, and caused the unsafe, unsanitary, and unsightly conditions on the property to be abated;

WHEREAS, as shown on the attached Exhibit 1, the City expended the amount of \$12,254.00 to raze (demolish) and remove the dilapidated, unsightly and unsafe structure located on the aforesaid property, and to abate the unsightly conditions located thereon;

WHEREAS, Ordinance No. 5364 provides that the City of Springdale shall have a lien upon the aforesaid described real property for the cost of razing (demolishing) and removing said structure and for the cost of abating said aforementioned conditions, said costs to be determined at a hearing before the City Council; and

WHEREAS, the property owner has been given at least 30 days written notice of the public hearing in accordance with Ark. Code Ann. §14-54-903, as shown on the attached Exhibit 2;

WHEREAS, Ark. Code Ann. §14-54-904 authorizes the City Council to assert a clean-up lien on this property to collect the amount expended by the City in cleaning up this property;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, pursuant to Ark. Code Ann. §14-56-203 and Ark. Code Ann. §14-54-904, the City Council certifies \$12,254.00, plus 10.00% for collection, to the Washington County Tax Collector to be placed on the tax books as delinquent taxes on the above-described property and collected accordingly.

Emergency Clause. It is hereby declared that an emergency exists and this ordinance, being necessary for the preservation of the health, safety and welfare of the citizens of Springdale, Arkansas, shall be in effect immediately upon its passage and approval.

day of September, 2019.

	Doug Sprouse, Mayor	
ATTEST:		
Denise Pearce, CITY CLERK		
APPROVED AS TO FORM:		
Ernest B. Cate. CITY ATTORNEY		

PASSED AND APPROVED this



### INVOICE

AUGUST 20, 2019

M&T BANK ATTN: PATRICK GLICK PROPERTY PRESERVATION ESCALATIONS 475 CROSSPOINT PARKWAY GETZVILLE, NY 14068

RE: Property demolition - 422 A Caudle Ave, Springdale, AR

Please remit payment to the City of Springdale for the following involces for expenses related to the demolition of the vacant structure located at 422 A Caudle Ave.

Vendor/Description Amount

Parker Environmental inc. \$ 4,500.00 Asbestos removal and disposal Redline Commercial & Industrial Contractors

7,754.00 Demotition of structure

TOTAL DUE \$ 12,254.00

PLEASE MAKE CHECK PAYABLE TO: CITY OF SPRINGDALE

MAIL PAYMENT TO: CITY OF SPRINGDALE ATTN: LAURA FAVORITE 201 SPRING ST. SPRINGDALE, AR 72764



Office Of The City Attorney

Springdale, Arkansas 72764 Phone (479) 756-5900 Fax (479) 750-4732 www.springdalear.gov

July 31, 2019

Ernest B. Cate City Attorney ecate@springdalear.gov

Taylor Samples Senior Deputy City Attorney tsamples@springdalear.gov

Sarah Sparkman Deputy City Attorney ssparkman@springdalear.gov

David D. Phillips Deputy City Attorney dphillips@springdalear.gov

Lynda Belvedresi Case Coordinator/ Victim Advocate lbelvedresi@springdalear.gov

Steve Helms Investigator shelms@springdalear.gov

Cindy Horlick Administrative Legal Assistant/Paralegal chorlick@springdalear.gov

Jacque Roth Docket Coordinator/ Discovery Clerk jroth@springdalear.gov

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Corporation Service Company Registered Agent for Lakeview Loan Servicing, LLC 300 Spring Building, Suite 900 300 S. Spring St. Little Rock, AR 72701

Lakeview Loan Servicing, LLC P.O. Box 840 Buffalo, NY 14203-1495

Property located at 422 Caudle Ave., Springdale, Washington County, Arkansas Parcel #815-26168-000

Dear Property Owner:

On March 12, 2019, the Springdale City Council passed Ordinance No. 5364. This Ordinance ordered that the unsafe structure located at 422 Caudle Ave. be razed (demolished) and removed, and that the unsightly conditions on the property be abated. The Ordinance provided that this be done within thirty (30) days.

The structure on the property was not razed (demolished) and removed within thirty (30) days as required by Ordinance No. 5364. As a result, the City of Springdale caused the structure located at 422 Caudle Ave. to be razed (demolished) and removed, and caused the unsafe, unsanitary, and unsightly conditions on the property to be abated. Enclosed are the billing statements showing the City's cost of \$12,254.00 (\$4,500.00 for asbestos removal; \$7754.00 for demolition) to clean up the property and remove the structure.

This is to notify you that in the event this amount is not paid on or before September 10, 2019, a hearing will be held before the Springdale City Council pursuant to Ark. Code Ann. § 14-54-904 to determine the amount of the lien to which the City is entitled for cleaning up the property. The hearing will be held Tuesday, September 10, 2019, at 6:00 p.m. in the City Council Chambers at the City Administration Building, 201 Spring Street, Springdale, Arkansas.

You will be entitled to present evidence at this hearing concerning the amount of the lien the City of Springdale is claiming. I have enclosed a copy of the proposed ordinance that will be presented at that meeting.

I am also forwarding a copy of this letter to you via first class mail as well. If you should have any questions, please let me know.

Sincerely,

Ernest B. Cate City Attorney

enclosures

001

Mike Chamlee, Chief Building Official Tom Evers, Chief Building Inspector Parker Environmental Inc.

Parker Environmental Inc. P.O. Box 550 Alexander, AR 72002

# Invoice

Date	Invoice #
7/17/2019	9967

Bill To	
City of Springale 201 Spring Street Springdale, AR 72765	

Job Location Vacant Residential Structure 422 Caudle Ave., Units A & B Springdele, AR 72764 Flooring Removal

		P.O. No.	Terms	Project
Quantity	Description			
			Rate	Ameunt
	Removal and disposal of approx. 246 sq. ft. of limiteum and 1 asbestos containing flue pipe a inspection report dated April 2019  Price includes final clearance air monitoring by party consultant  Late Account if Account State 11 70-11  Project 4 Invoice of 1110 Containing the project 4 Approved by India (4)  Approved by India (4)  Approved by India (4)  Approved by India (4)  Approved by India (4)	sidentified in the asbestos  20 independent third	4,500.00	4,500,
Phone #			Total	\$4,500,00

COMMERCIAL WINDOWSTRIAL CONTRACTOR

2156 E Emma Ave Suite A Springdale, AR 72764 Invoice

Dane

in care in

7726-701

10.181.785.2

Bill To

City of Springdole, AR 107 Spring St Springdole, AR 72764

florn Oescription
01 DEMOLITION Demo & 421 Caudle, Springdale, AR

Terms Project

Due on re... 19-RL062 422 Caudie Danc

Qty Rate Amount

7,754.00 7,754.00

Thank you los your business?

E-mail

accounting@redline.me

Total

\$7,754.00

Payments/Credits

\$0.00

Balance Due

\$7,754.00

SENDER COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul> <li>Complete items 1, 2, and 3.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	A. Signature  X. / Li Addressee  B. Alexandr by (Printed Name)  G. Date of Delivery
Article Addressed to:  Corporation Service Company Registered Agent for Lakeview Loan Servicing, LLC 300 Spring Building, Suite 900 300'S, Spring St.	
Little Rock, AR 72701	3. Service Type □ Priority Mail sxomss® □ Registered Mail™ □ Registered Mail™ □ Registered Mail™ □ Registered Mail Restricted
9590 9402 4320 8190 4181 52  2 Article Number (Parisfer from service label)  7017 2580 0000 3373 1721	Certified Mail 9  Certified Mail Restricted Dalivery  Collect on Delivery Plestricted Delivery  Collect on Delivery Plestricted Delivery  Yeal  Delivery  Rectim Receipt for Merchandise  Signature Confirmation  Signature Confirmation
PS Form <b>381</b> 1, July 2015 PSN 7630-02-000-9059	Domestic Return Receipt

.46

ORDINANCE NO.

AN ORDINANCE AUTHORIZING THE CITY CLERK TO FILE A CLEAN-UP LIEN FOR THE REMOVAL OF OVERGROWN BRUSH AND DEBRIS ON PROPERTY LOCATED WITHIN THE CITY OF SPRINGDALE, WASHINGTON COUNTY, ARKANSAS.

WHEREAS, the following real property located in Springdale, Washington County, Arkansas, is owned as set out below:

PROPERTY OWNER: Travis Franklin Jordan

**LEGAL DESCRIPTION:** Lot No. 7 in Block Number 4, Neals Addition to the City of Springdale, as

designated upon the recorded plat of said Addition LAYMAN'S DESCRIPTION: 804 N. Virginia St.

Springdale, Washington County, Arkansas

PARCEL NO.: 815-23657-000

WHEREAS, the owner was given notice, pursuant to Ark. Code Ann. §14-54-903, of the unsightly and unsanitary conditions on the properties described above, and instructed to clean the properties in accordance with Sections 42-77 and 42-78 of the Springdale Code of Ordinances;

WHEREAS, the property owner of record did not abate the situation on these properties, and as a result, the City of Springdale was required to abate the conditions on these properties and incurred cost as follows, and as shown in the attached Exhibits:

\$376.11 clean-up costs and \$21.95 administrative costs - 804 N. Virginia St. (#815-23657-000)

WHEREAS, the property owners have been given at least 30 days written notice of the public hearing in accordance with Ark. Code Ann. §14-54-903, as shown in the attached Exhibits;

WHEREAS, Ark. Code Ann. §14-54-904 authorizes the City Council to assert a clean-up lien on these properties to collect the amounts expended by the City in cleaning up these properties;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, pursuant to Ark. Code Ann. §14-54-904, the City Council certifies that the following real property shall be placed on the tax books of the Washington County Tax Collector as delinquent taxes and collected accordingly:

\$398.06. plus 10% for collection - 804 N. Virginia St. (#815-23657-000)

PASSED AND APPROVED this _	day of September, 2019.
ATTEST:	Doug Sprouse, Mayor
Denise Pearce, CITY CLERK  APPROVED AS TO FORM:	
Ernest B. Cate, CITY ATTORNEY	_



Office Of The City Attorney 201 Spring Street

Springdale, Arkansas 72764 Phone (479) 756-5900 Fax (479) 750-4732 www.springdalear.gov

August 1, 2019

Ernest B. Cate City Attorney ecate@springdalear.gov

Taylor Samples Senior Deputy City Attorney tsamples@springdalear.gov

Sarah Sparkman Deputy City Attorney ssparkman@springdalear.gov

David D. Phillips Deputy City Attorney dphillips@springdalear.gov

Lynda Belvedresi Case Coordinator/ Victim Advocats lbelvedresi@springdalear.gov

Steve Helms Investigator shelms@springdalear.gov

Cindy Horlick Administrative Legal Assistant/Paralegal chorlick@springdalear.gov

Jacque Roth Docket Courdinator/ Discovery Clerk jroth@springdalear.gov

CERTIFIED MAIL. RETURN RECEIPT REQUESTED AND REGULAR MAIL

Travis Franklin Jordan 3401 W. Cornell Dr. Fayetteville, AR 72704-6785

Notice of clean-up lien on property located on 804 Virginia St., Springdale, Washington County, Arkansas, Tax Parcel No. 815-

23657-000

Dear Property Owner:

On June 5, 2019, notice was posted on property located at 911 Crutcher St., Springdale, Arkansas, that the property was in violation of Springdale City Ordinance 42-77, and needed to be remedied within seven (7) days. Notice was mailed to the owner of record on June 6, 2019, that the City intended to seek a clean-up lien on this property pursuant to Ark. Code Ann. §14-54-903 if the violations were not remedied. The notice also applied to any violations that may be found on the property within the next 12 months.

Subsequent to the above-referenced violation notice being issued, a city code violation was found to have existed on the property. As a result, the City of Springdale took action to remedy the violations on the property, as is allowed by Ark. Code Ann. §14-54-903, on or about July 11, 2019. As of this date, the total costs incurred by the City of Springdale to clean this property are \$376.16. I have enclosed an invoice evidencing the abatement costs incurred and paid by the City of Springdale to clean this property. Also, in accordance with Ark. Code Ann. §14-54-903(c)(4), administrative fees may be added to the total costs incurred by the City of Springdale, which will include certified mailing fee in the amount of \$6.95 per letter and a filing fee in the amount of \$15.00 to the Washington County Circuit Court.

This is to notify you that in the event this amount is not paid to the City of Springdale on or before September 10, 2019, a hearing confirming the amount of the lien will be held before the Springdale City Council pursuant to Ark. Code Ann. §14-54-903 to determine the amount of the clean-up lien to which the City is entitled for cleaning up the property. The hearing confirming the amount of the lien will be held Tuesday, September 10, 2019, at 6:00 p.m. in the City Council

Chambers at the City Administration Building. 201 Spring Street, Springdale. Arkansas. If this amount is paid prior to the hearing, no lien will be pursued.

Please remit the total sum of \$383.11, which includes \$376.16 for cleaning up the property and \$6.95 for certified mailings to the City of Springdale by the date listed above. If you fail to pay this amount before the hearing, then an additional \$15.00 will be added for the costs of filing the ordinance with the Circuit Clerk's Office. Please provide me with a copy of any payment you make so that I will be aware of it.

If you desire to contest the amount sought above, you will need to contact Community Engagement Division at 479-756-7712 for an appointment and you will be given a court date in Springdale District Court where you will have the opportunity to state your case before the District Court Judge.

This letter is also being mailed by regular mail to the address above. Delivery of that letter by the U.S. Postal Service shall warrant service should the certified letter be returned.

If you should have any questions, please let me know.

Sincerely

Sarah Sparkman

Deputy City Attorney

enclosures SS:ch City of Springdale

Neighborhood Services Division

210 Spring St

Springdale AR 72764

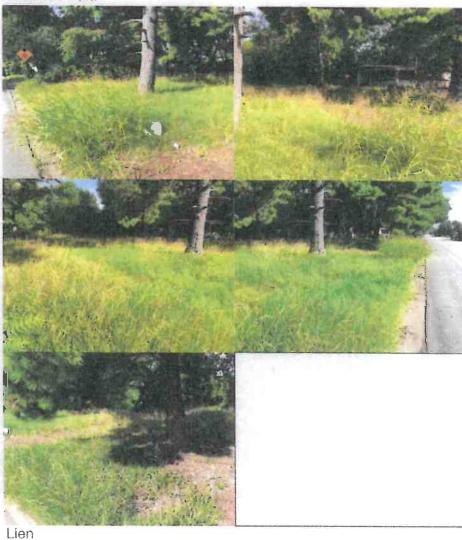
Phone 479\_756\_7712 SPRINGDALE

### CITY ABATEMENT-2019 - Thursday, July 11, 2019 8:49:33 AM (LOGAN-CODE 2)

User Name LOGAN-CODE 2

User # 4792831304 Form Started 7/11/2019 8:49:33 AM Form Submitted 7/11/2019 9:32:31 AM

Property Address 804 Virginia
Before Picture Attached Data



Type of Abatement Date of Abatement Officer on Site-

Labor Rate Recovery

Thursday, July 11, 2019 8:49:00 AM L. West

Employee	Henry Hernandez
HH Benefit Rate	\$54.84
Method of Compliance	
1 Method of Compliance	Mowing
Equipment Used	
Equipment	754 Grasshopper ,743 Kubota,6037 Service Pick Up Truck
754 Grasshopper	\$55.00
743 Kubota	\$65.00
6037 Service Pick Up Truck	\$35.00
Time of Abatement in	1
Hours	
Number of Temporary	2
	49.00
Temporary Labor Rate Recovery	48.00
Employee labor recovery	54.84
per hour	
Total Employee Cost	54.84
Equipment Cost per hour	155.00
Total Equpment Cost	155.00
Disposal Cost Recovery	\$118.32
Number of Tires Removed	0
(\$2 Each)	
Number of Electronics Removed (\$10 Each)	0
Containers of Chemicals	0
(\$1 Each)	
Freon Removal Recovery	0
(\$20 each)	
Total Cost of Abatement	376.16
Items Removed from Property	At property 804 Virginia the landscape crew removed tall grass and weeds.

# Final Photos Attached Data

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul> <li>Complete items 1, 2, and 3.</li> <li>Frint your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	A. Signature  X. D. Agent C. D. Address  B. Received by (Printed Name)  C. Date of Delive
Article Addressed to:	is delivery address different from item 1?      If YES, enter delivery address below:      No
Travis Franklin Jordan 3401 W. Cornell Dr. Fayetteville, AR, 72704-6785	
3401 W. Cornell Dr.	3. Service Type  3. Service Type  4. Adult Signature  4. Adult Signature Restricted Delivery  5. Cartified Mail Positioned Delivery  6. Cellect on Delivery  Merchandise

RESOLUTION NO.
----------------

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH THE CITY OF ELM SPRINGS, ARKANSAS, PERTAINING TO THE GENE GEORGE BOULEVARD WIDENING BLEAUX AVENUE TO ELM SPRINGS ROAD PROJECT #18BPS1.

WHEREAS, the City of Springdale has commenced construction and improvements associated with Gene George Boulevard Widening Bleaux Avenue to Elm Springs Road Project #18BPS1 ("the Project");

WHEREAS, a portion of the Project, known as Tract 49 (Washington County Tax Parcel No. 750-00637-000) is located in the City of Elm Springs, and Springdale has acquired and paid just compensation to the property owner thereof for the easements and property needed by Springdale for the Project;

WHEREAS, Springdale and Elm Springs have reached an agreement as to issues relating to that portion of the Project that is located in Elm Springs;

WHEREAS, it is the intent of Springdale and Elm Springs to enter into a Memorandum of Understanding to memorialize the agreement between the parties, with said Memorandum of Understanding being attached hereto as Exhibit "A" and is hereby incorporated by reference.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, that the Mayor and City Clerk are hereby authorized to enter into a Memorandum of Understanding with the City of Elm Springs, Arkansas, relating to that portion of the Gene George Boulevard Widening Bleaux Avenue to Elm Springs Road Project #18BPS1 that is located in Elm Springs.

day of	, 2019.
Doug Sprouse, Mayor	
<u> </u>	

### MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into on this \_\_\_\_\_ day of \_\_\_\_\_\_, 2019, by and between the City of Springdale, Arkansas ("Springdale"), and the City of Elm Springs, Arkansas ("Elm Springs");

### W-I-T-N-E-S-S-E-T-H

WHEREAS, as part of the Gene George Boulevard Widening Bleaux Avenue to Elm Springs Road Project #18BPS1 ("the Project") undertaken by Springdale, to meet the needs of the public; and in order for Springdale to provide safe and adequate roadways, sidewalks, storm sewers, curbs and gutters sufficient to meet growth and increasing traffic and utilities, Springdale has commenced the construction and improvements of the Project;

WHEREAS, a portion of the Project, known as Tract 49 (Washington County Tax Parcel No. 750-00637-000) is in Elm Springs, and Springdale has acquired and paid just compensation to the property owner thereof for the easements and property needed by Springdale for the Project;

WHEREAS, Springdale and Elm Springs have reached an agreement as to issues relating to that portion of the Project that is located in Elm Springs;

WHEREAS, it is the intent of Springdale and Elm Springs to enter into this Memorandum of Understanding to memorialize the agreement between the parties;

WHEREAS, the governing bodies of Springdale and Elm Springs have approved the execution of this Memorandum of Understanding.

NOW, THEREFORE, in exchange for mutual and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree and covenant as follows:

- 1. Maintenance of the Project. Springdale agrees that it shall be responsible for all ongoing maintenance of Gene George Boulevard and the roundabout at Gene George Boulevard/
  Elm Springs Road, including that portion located in Elm Springs as identified above.

  2. Utility Access. Elm Springs shall have access to any utility easements obtained by Springdale for the Project on Tract 49 which are located in Elm Springs.

  3. Access to Roundabout/Development. Access from Tract 49 to the roundabout at Elm Springs Road/Gene George Boulevard shall be as shown on the construction plans for the Project. Otherwise, Springdale will not place any development or zoning restrictions on any property located in Elm Springs and adjacent to the roundabout at Gene George Boulevard/Elm Springs Road, as such property is subject to those requirements
- 4. <u>Contingency</u>. The Agreement is contingent upon the approval of the Springdale City Council and the Elm Springs City Council.

contained in the Code of Ordinances of the City of Elm Springs, Arkansas.

City Council and the Elm Springs City Council		
IN WITNESS WHEREOF, the parties	have hereunto set their hands this day	y of
, 2019.		
CITY OF SPRINGDALE, ARKANSAS		
By: Doug Sprouse, Mayor	By:	
CITY OF ELM SPRINGS, ARKANSAS		
By:Harold Douthit, Mayor	By: Twila Taylor, City Clerk	

RESOLUTION NO.

# A RESOLUTION AUTHORIZING THE EXECUTION OF A CONSTRUCTION MANAGER CONTRACT FOR LUTHER GEORGE PARK PROJECT NO. CP1906

**WHEREAS,** Arkansas Statute 19-11-801 provides for the employment of a construction manager for public improvement projects, and

WHEREAS, the City Administration would like to renovate and expand Luther George Park and the Mayor has recommended Milestone Construction Company, LLC to serve as construction manager for this project, and

**WHEREAS,** Milestone Construction Company, LLC has agreed to furnish pre-construction services for phase 1 for \$2,500 and phase 2 for \$10,000.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, that the Mayor is hereby authorized to execute a contract for construction manager services with Milestone Construction Company, LLC for services to be provided relating to the renovation and expansion of Luther George Park. The fee for phase 1 of this contract will be paid from funds reserved for park land acquisition in the Capital Improvement Project Fund.

**PASSED AND APPROVED** this 10<sup>th</sup> day of September, 2019.

ATTEST:	Doug Sprouse, Mayor
Denise Pearce, City Clerk	
APPROVED AS TO FORM:	
Ernest B. Cate, City Attorney	



# Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

**AGREEMENT** made as of the 26th day of August in the year 2019 (In words, indicate day, month and year.)

BETWEEN the Owner: (Name, legal status and address)

City of Springdale City Administration Building 201 Spring Street Springdale, AR 72764

and the Construction Manager; (Name, legal status and address)

Milestone Construction Company, LLC 2002 S. 48th Street, Suite A Springdale, AR 72762

for the following Project; (Name and address or location)

Renovations to Luther George Park 300 Park Street Springdale, AR 72764

The Architect: (Name, legal status and address)

SMM Architects 1824 Sophie Wright Place New Orleans, LA 70130

The Owner's Designated Representative: (Name, address and other information)

Wyman Morgan

The Construction Manager's Designated Representative: (Name, address and other information)

Sam Hollis

mit.

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201 TM –2007.
General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

The Architect's Designated Representative: (Name, address and other information)

Wes Michaels

The Owner and Construction Manager agree as follows.

i

### TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES
- 3 OWNER'S RESPONSIBILITIES
- 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
- 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 6 COST OF THE WORK FOR CONSTRUCTION PHASE
- 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES.
- 8 INSURANCE AND BONDS
- 9 DISPUTE RESOLUTION
- 10 TERMINATION OR SUSPENSION
- 11 MISCELLANEOUS PROVISIONS
- 12 SCOPE OF THE AGREEMENT

### EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

### ARTICLE 1 GENERAL PROVISIONS

### § 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents tisted in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

### § 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

### § 1.3 General Conditions

Init.

For the Preconstruction Phase, AIA Document A2017M-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, which document is incorporated herein by reference. The term "Contractor" as used in A201-2007 shall mean the Construction Manager.

### ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

### § 2.1 Preconstruction Phase

 $\S$  2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

### § 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability: availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

### § 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling

### § 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

### § 2.1.6 Subcontractors and Suppliers

lait.

The Construction Manager shall develop bidders' interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager

shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

### § 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

### § 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

### § 2.2 Guaranteed Maximum Price Proposal and Contract Time

- § 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.
- § 2.2.7 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.
- § 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:
  - .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
  - .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
  - .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
  - .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
  - .5 A date by which the Owner must accept the Guaranteed Maximum Price.
- § 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.
- § 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

### § 2.3 Construction Phase

### § 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201-2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

### § 2.3.2 Administration

init.

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

- § 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.
- § 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.
- § 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.
- § 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

### § 2.4 Professional Services

Section 3.12.10 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

### § 2.5 Hazardous Materials

Section 10.3 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

### ARTICLE 3 OWNER'S RESPONSIBILITIES

### § 3.1 Information and Services Required of the Owner

- § 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships. flexibility and expandability, special equipment, systems, sustainability and site requirements.
- § 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.
- § 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.
- § 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

- § 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.
- § 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands: adjacent drainage: rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.
- § 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.
- § 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

### § 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

### § 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133<sup>TM</sup>–2014, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

# ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES § 4.1 Compensation

- § 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:
- § 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2: (Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)
- Phase I Preconstruction Services for Preliminary Budgeting and Cost Estimating prior to project being fully funded = \$2,500
- Phase 2 Preconstruction Services for Continued Cost Estimating and Developing the Final GMP after the project is fully funded (or as approved by the Owner) = \$10,000
- § 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within twelve (12) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

### § 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager. (Insert rate of monthly or annual interest agreed upon.)

5 % five percent

### ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

### § 5.1.1 The Construction Manager's Fee!

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

To be negotiated at a later date

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work;

TBD

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

TBD

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed ninety-five percent (95 %) of the standard rate paid at the place of the Project.

### § 3.1.5 Unit prices, if any!

(Identify and state the unit price, state the quantity limitations, if any, to which the unit price will be applicable.)

Item TBD Units and Limitations

Price per Unit (\$0.00)

### § 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner. (Insert specific provisions if the Construction Manager is to participate in any savings.)

TBD

lanit.

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

AIA Document A133 TM = 2009 (formerly A121 TMCMc = 2003). Copyright © 1991, 2003 and 2009 by The American Institute of Architects. All rights reserved.

This document was produced by AIA software at 15:27 58 ET on 08/26/2019 under Order No. 4120223263 which expires on 04/16/2020, and is not for resale.

### § 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

- § 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.
- § 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.
- § 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.
- § 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

# ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE § 6.1 Costs to Be Reimbursed

- § 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.
- § 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

### § 6.2 Labor Costs

- § 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.
- § 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.
- (If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)
- § 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.
- § 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements,

customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

### § 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

### § 6.4 Costs of Materials and Equipment incorporated in the Completed Construction

- § 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.
- § 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

## § 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

- § 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.
- § 8.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.
- § 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.
- § 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.
- § 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.
- § 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

### § 6.6 Miscellaneous Costs

- § 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.
- § 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.
- § 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and semiements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

- § 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.
- § 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.
- § 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.
- § 6.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

### § 6.7 Other Costs and Emergencies

- § 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.
- § 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201-2007.
- § 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties. Subcontractors, suppliers, or
- § 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

### § 6.8 Costs Not To Be Reimbursed

init.

- § 6.3.1 The Cost of the Work shall not include the items listed below:
  - .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11.
  - .2 Expenses of the Construction Manager's principal office and offices other than the site office:
  - .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
  - 4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
  - Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
  - .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;

- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

### § 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

### § 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

### § 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts. Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

### ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

### § 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the 15th day of the following month. If an Application for Payment is received by the Architect after the application date fixed

mis.

above, payment shall be made by the Owner not later than twenty (20) days after the Architect receives the Application for Payment,

(Federal, state or local laws may require payment within a certain period of time.)

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petry cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201–2007;

.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing:

Add the Construction Manager's Fee, less retainage of ten percent (10 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.4 Subtract retainage of ten percent (10 %) from that portion of the Work that the Construction Manager self-performs;

5 Subtract the aggregate of previous payments made by the Owner;

lait.

.6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

37 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

### § 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment:
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

# ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of A1A Document A201–2007. (State bonding requirements, if any, and limits of liability for insurance required in Article 11 of A1A DocumentA201–2007.)

Type of Insurance or Bond TBD Limit of Liability or Bond Amount (\$0,00)

## ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box, If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

1		Arbitration pursuant to Section 15.4 of AIA Document A201-2007
Lamped	·	Litigation in a court of competent jurisdiction
Ĺ	}	Other: (Specify)

# § 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker. (If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

# ARTICLE 10 TERMINATION OR SUSPENSION

# § 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2.

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

# § 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

§ 18.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

# § 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of A1A Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of A1A Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

# ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201-2007.

# § 11.2 Ownership and Use of Documents

Section 1.5 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

# § 11.3 Governing Law

Section 13.1 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

# § 11.4 Assignment

lesit.

1

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201-2007, neither party to the Contract shall assign the Contract as a

whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

# § 11.5 Other provisions:

The Milestone Project Manager may be stationed on site or in the Milestone main office in Springdale. Any time spent working on the project whether on site or in the main office will be charged at a rate of \$65/hr and will be included in the overall GMP.

# ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201-2007, General Conditions of the Contract for Construction
- .3 AIA Document E201<sup>TM</sup>-2007, Digital Data Protocol Exhibit, if completed, or the following:
- .4 AIA Document E202<sup>TM</sup>-2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
- .5 Other documents: (List other documents, if any, forming part of the Agreement.)

This Agreement is entered into as of the da	y and year first written above
	Thur & bolling
OWNER (Signature)	CONSTRUCTION MANAGER (Signature)
Doug Sprouse, Mayor	Sam Hollis. President
(Printed name and title)	(Printed name and title)

The state of the s	
ORDINANCE NO.	
AN ORDINANCE AMENDING	
ORDINANCE NO. 5068 ANNEXING	
CERTAIN PROPERTY INTO THE	
CITY OF SPRINGDALE,	
WASHINGTON COUNTY, ARKANSAS.	
, in the second of the second	

WHEREAS, pursuant to Ark. Code Ann. §14-40-601, et seq., the City of Springdale passed Ordinance No. 5068 on July 12, 2016, annexing certain property into the City of Springdale, said Ordinance being filed for record with the Circuit Clerk of Washington County, Arkansas, on July 20, 2016, as File 2016-00020601;

**WHEREAS**, since the passage of Ordinance No. 5068, it has since been discovered that the legal description contained in Ordinance No. 5068 contained an error resulting in a parcel of property being inadvertently annexed into the City of Springdale, said property is not contiguous to the City of Springdale, and said property is described as follows ("the Property"):

Tract 2 of a Tract Split filed for record with the Circuit Clerk of Washington County, Arkansas, on June 30, 2016, as File 2016-00018645, and more particularly described as a Part of the Southwest Quarter of the Northeast Quarter of Section 9, Township 17North, Range 29 West, Washington County, Arkansas, being more particularly described as follows:

BEGINNING AT A FOUND 1/2" REBAR, SAID POINT BEING THE NORTHEAST CORNER OF SAID FORTY ACRE TRACT, THENCE S02°20'29"W 158.37' ALONG THE EAST LINE OF SAID FORTY ACRE TRACT TO A POINT ON THE NORTHERN RIGHT OF WAY OF HIGHWAY 412, THENCE ALONG SAID RIGHT OF WAY THE FOLLOWING 5 COURSES AND DISTANCES: N70°41'44"W 247.78', THENCE N73°12'02"W 201.87', THENCE N89°24'22"W 247.35', THENCE N66°10'21" W 131.27', THENCE N65°48'58"W 45.25' TO A FOUND 1/2" REBAR, THENCE N64°05'49"W 8.11' TO THE INTERSECTION OF SAID RIGHT OF WAY WITH THE NORTH LINE OF SAID FORTY ACRE TRACT, THENCE RUN ALONG SAID NORTH LINE S86°31'54"E 202.15' TO A FOUND 5/8" REBAR, THENCE CONTINUE ALONG SAID NORTH LINE RUNNING S85°48'35"E 649.52' TO THE POINT OF BEGINNING, AND CONTAINING 1.46 ACRES MORE OR LESS. SUBJECT TO EASEMENTS AND RIGHTS-OF-WAY OF RECORD.

More commonly known as Washington County Tax Parcel No. 815-36197-400.

**WHEREAS,** on August 27, 2019, the County Court of Washington County, Arkansas, entered an Amended Order of Annexation excluding the Property from the annexation affected by Ordinance No. 5068; and

**WHEREAS,** Ordinance No. 5068 should be amended to exclude the Property so that the Property may correctly be deemed to be in Washington County, Arkansas.

# NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS:

**Section 1:** That Ordinance No. 5068 is hereby amended to remove the Property described herein, and said property is hereby excluded from the property annexed into the City of Springdale by Ordinance No. 5068, and upon the filing of this Ordinance, the Property described herein shall no longer be a part of the City of Springdale.

**Section 2:** That this ordinance shall be mailed to the recorder of deeds of Washington County, Arkansas, as well as the County Clerk of Washington County, Arkansas, who shall certify one copy of the plat of the annexed territory and one copy of the Order of the Court and the ordinance of this Council and forward a copy of each document to the Secretary of State and to the Director of the Tax Division of the Arkansas Public Service Commission to show the above described Property now located within Washington County, Arkansas.

**Section 3:** Emergency Clause. It is hereby declared that an emergency exists and this ordinance, being necessary for the preservation of the health, safety and welfare of the citizens of Springdale, Arkansas, shall be in effect immediately upon its passage and approval.

PASSED AND APPROVED this	day of	, 2019.
	Doug Sprouse, Mayor	
ATTEST:		
Denise Pearce, City Clerk		
APPROVED AS TO FORM:		
Ernest B. Cate, City Attorney		

์ อังดมชีญี่ Envelope ID: 59F8E1CF-D082-4553-B136-1CD827117D9A

FILED 2019 AUG 27 AM II: 05

# IN THE COUNTY COURT OF WASHINGTON COUNTY, ARKANSAS

IN THE MATTER OF ANNEXATION OF CERTAIN LANDS TO THE CITY OF SPRINGDALE, ARKANSAS.

No. CC 2016-2

TO THE COUNTY JUDGE OF WASHINGTON COUNTY, ARKANSAS

# AMENDED ORDER OF ANNEXATION

Now on this 27th day of August, 2019, this cause comes on to be heard, the Petitioner, Sherry Farm LLC, and the City of Springdale, Arkansas, announcing ready for a hearing of the cause and there being no protests or objects filed, whereupon, the matter is submitted to the Court, the Court being well and sufficiently advised finds:

- On June 2, 2016, this Court entered an Order of Annexation pertaining to the annexation of certain real property ("the Property") into the City of Springdale, Arkansas.
- 2. Pursuant to Ark. Code Arm. §14-40-601, et seq., the City of Springdale passed Ordinance No. 5068 on July 12, 2016, annexing the Property into the City of Springdale, said Ordinance being filed for record with the Circuit Clerk of Washington County, Arkansas, on July 20, 2016, as File 2016-00020601.
- It has since been discovered that the legal description contained in both the Order of Annexation entered by this Court, and Ordinance No. 5068 passed by the City of Springdale,

contained an error resulting in a parcel of property being inadvertently annexed into the City of Springdale, and said property is not contiguous to the City of Springdale.

- Accordingly, the Order of Annexation entered herein on June 2, 2016, needs to be amended to exclude this inadvertently annexed property from the Order of Annexation.
- Upon the entry of an Amended Order of Annexation, the City of Springdale will
  take action to amend Ordinance No. 5068 to exclude the same inadvertently annexed property
  from the annexation.
- 6. The property to be excluded from the Order of Annexation entered by this Court on June 2, 2016, and to be excluded from Springdale Ordinance No. 5068 is described as:

Tract 2 of a Tract Split filed for record with the Circuit Clerk of Washington County, Arkansas, on June 30, 2016, as File 2016-00018645, and more particularly described as a Part of the Southwest Quarter of the Northeast Quarter of Section 9, Township 17North, Range 29 West, Washington County, Arkansas, being more particularly described as follows:

BEGINNING AT A FOUND 1/2" REBAR, SAID POINT BEING THE NORTHEAST CORNER OF SAID FORTY ACRE TRACT, THENCE S02°20'29"W 158.37' ALONG THE EAST LINE OF SAID FORTY ACRE TRACT TO A POINT ON THE NORTHERN RIGHT OF WAY OF HIGHWAY 412, THENCE ALONG SAID RIGHT OF WAY THE FOLLOWING 5 COURSES AND DISTANCES: N70°41'44"W 247.78', THENCE N73°12'02"W 201.87', THENCE N89°24'22"W 247.35', THENCE N66°10'21" W 131.27', THENCE N65°48'58"W 45.25' TO A FOUND 1/2" REBAR, THENCE N64°05'49"W 8.11' TO THE INTERSECTION OF SAID RIGHT OF WAY WITH THE NORTH LINE OF SAID FORTY ACRE TRACT, THENCE RUN ALONG SAID NORTH LINE \$86°31'54"E 202.15' TO A FOUND 5/8" REBAR, THENCE CONTINUE ALONG SAID NORTH LINE RUNNING **S8**5°48'35"E 649.52' TO THE POINT OF BEGINNING, AND CONTAINING 1.46 ACRES MORE OR LESS. SUBJECT TO EASEMENTS AND RIGHTS-OF-WAY OF RECORD.

More commonly known as Washington County Tax Parcel No. 815-36197-400.

DocuStg: Envelope iD; E9F8E1CF-D082-4553-8136-10D827117D9A

Springdale.

IT IS THEREFORE, CONSIDERED, ORDERED AND ADJUDGED that the Order of Amnexation entered by this Court on June 2, 2016, is hereby amended to remove the real property described in Paragraph 6 herein, and said property is hereby excluded from the property annexed into the City of Springdale, and upon entry of this Amended Order of Annexation, the City of Springdale shall take the necessary steps to amend Springdale Ordinance No. 5068 so as to be consistent with this Amended Order of Annexation, and upon the filling of the amended Ordinance, the property described in Paragraph 6 herein shall no longer be a part of the City of

County Judge

DozuSigned by:

13.50

A8F752700FB9450...

# TRACT SPLIT

12

NASIS OF PLANING ARIGAN ASSERT, PLANE, NO. THEON., NADER

REST PROPERTY OF THE STATE OF STATE AND ATT PAGE 833.

MOME PETITIONS OF ANY THE PLAT MAY BE STOWN THE PARTY OF SALE FOR CLASSING

DAMOS (DAS) ON THE STAT AS EXPRESTED IN FRITT AND DIGGRAY, PARTS WHEREOF UNLY. O'THE WEI NOT TO MONIMALITY USES FROM AT POPEN. SPERCE HEROCYLE.
UPILITIC NOT BROWN FOR CLASSICY.



SPSTOC-SIOZER STORES

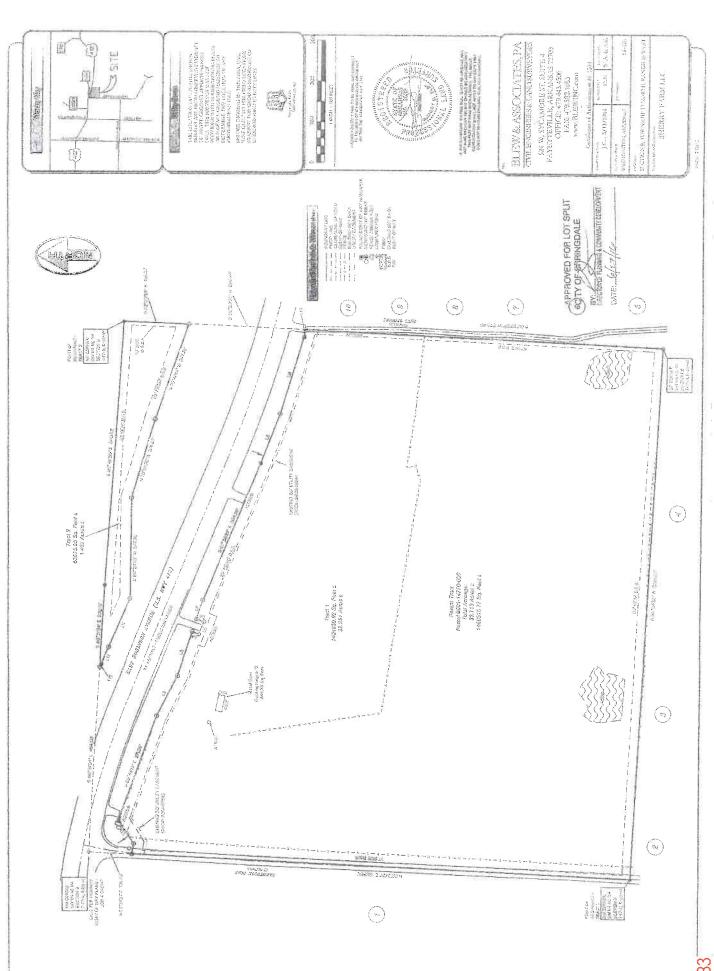
# BLEWASSCAMATICS, PACIFIED FOR CIVIL INCOMERS ALADS AND SANDOS

524 W. SYCAMORE ST, SISTE 3
FAYETTEVILLE, ARKANSAC 72703
OPPUTE: PAYASASAC
FAX. 479-522 1863
WING CORP.

NO. J.C. 5/13/2016

SHERRY FARMLIK

ECTIVING ROUNSHIP PANCENTLANGER - - EXI



Parcel: 815-36197-400

**Washington County Report** 

ID: 120710

Property Owner

Name: SHERRY FARM LLC

Mailing Address: 1903 CARRIE PLACE

SPRINGDALE, AR 72762

Type: (RV) Res. Vacant

Tax Dist: (501) SPRINGDALE SCH, SPG

Millage Rate: 62.70

Extended Legal: ANNEXED TO CITY OF SPRINGDALE FOR 2016 AND FOLLOWING YEARS PER ANNEXATION ORDER NO 5068 PT SW NE 1.462 AC

Subdivision: 9-17-29 SPRINGDALE OUTLOTS

Property Information

Block / Lot: N/A / N/A

Size (Acres):

S-T-R: 09-17-29

Physical Address: 5060 E ROBINSON AVE

CHANGE INC. COURT E. C.	A LAND LOADING TOTAL	
Market and Assessed Values	Tayee	

market and	Assessed value	38 		Taxes		
	Estimated Market Value	Full Assessed (20% Mkt Value)	Taxable Value	Estimated Taxes:	\$126	
Land:	\$11,950	\$2,390	\$2,390		\$0 Note: For amount, are estimates only if one a mounty/porehous confector for subject pro-	
Building:	()	()	0	Credit:		
Total:	\$11,950	\$2,390	\$2,390			
Special Ass	sessments					
Assessmer	nt				Ta	x Amount
Vol Fire						\$3.59
Vol Library						\$2.39
					Total	\$5.98
Land						
Land Use			Size		Units	
			1.000		Acres	
			0.462		Acres	
Total			1.462			

# Parcel: 815-36197-400

# **Washington County Report**

ID: 120710

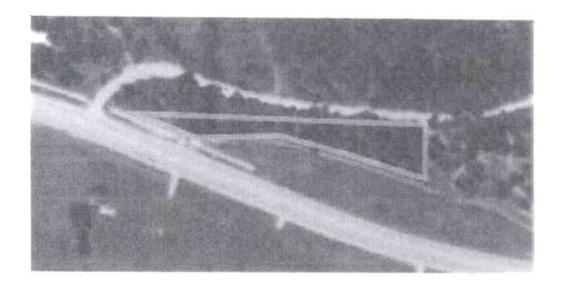
# Deed Transfers

Deed Date	Book	Page	Deed Type	Stamps	Est. Sale	Grantee	Code	Type
5/13/2016	2016	18645	Survey	•		SHERRY FARM LLC	N <sup>3</sup> /A	N/A
0/9/2008	2008	32999	Quit Claim			SHERRY FARM LLC	N/A	N/A
10/9/2008	2008	32998	Trust Deed			ATCHISON, LAURINDA KAY; SHERRY,	N/A	N/A
0/9/2008	2008	32997	CorrDeed			BILL G SHERRY REVOCABLE TRUST	N/A	N/A
0/30/2008	2008	32037	ExecDead			BILL G SHERRY REVOCABLE TRUST	N/A	N/A
1/29/1999	P-97	329	N/A	0.00	\$0	SHERRY, BILL	N/A	N/A
3/31/1900	88	124	Warr. Deed	0.00	\$0	HUNTLEY, ARTHUR L. & EUNICE	N/A	Improve d

# Reappraisal Value History

Tax Year	Total Value	Total Assessed
2017	\$11,950.00	\$2,390.00
2018	<b>\$</b> 11,950.00	\$2,390,00

# Map



ORDINA	NCE	NO.	

AN ORDINANCE ANNEXING CERTAIN REAL **PROPERTY** TOTHE CITY OF SPRINGDALE, ARKANSAS, PURSUANT TO ARK. CODE ANN. §14-40-2002, AND MAKING A COMMITMENT TO MAKE MUNICIPAL **SERVICES** AVAILABLE TO **SAID** PROPERTY AS REQUIRED BY ARK. CODE ANN. §14-40-2002.

WHEREAS, P & C Steele Properties, LLC, ("Steele") is the owner of the following real property currently located in Bethel Heights, Benton County, Arkansas, and which is contiguous to and adjacent to the City of Springdale, Arkansas ("the Property")(legal descriptions and map attached hereto):

Benton County Parcel No. 20-00037-000 and Benton County Parcel No. 20-00045-000, containing 73.80 acres, more or less.

**WHEREAS,** Steele wishes to avail itself of the detachment and annexation procedure contained in Ark. Code Ann. §14-40-2001, *et seq.* as Steele is seeking additional municipal services, namely sewer and water services, to the Property;

WHEREAS, pursuant to Ark. Code Ann. §14-40-2002, Steele made demand upon the City of Bethel Heights to make a commitment to provide the requested municipal services to the Property; namely, municipal sewer service sufficient to provide not less than a twelve (12) inch service main to serve a mixed use commercial, residential, and office development of the Property, and municipal water service;

**WHEREAS**, the City of Bethel Heights has expressed in writing that it can or will make such a commitment as required by Ark. Code Ann. §14-40-2002;

WHEREAS, the present condition and status of the Bethel Heights "step system" is such that its sanitary sewer system is unable to serve present capacity and cannot be expected to provide the additional capacity necessary to provide sanitary sewer service adequate for the intended and planned use on the Property within the time provided by Ark. Code Ann. §14-40-2002, thereby rendering Bethel Heights' written commitment to provide sewer services untenable;

**WHEREAS**, the City of Bethel Heights has otherwise not complied with the requirements of Ark. Code Ann. §14-40-2002;

WHEREAS, the City of Springdale, as annexing municipality pursuant to Ark. Code Ann. §14-40-2002, by the adoption of this Ordinance, does hereby commit to take substantial steps within the time required by Ark. Code Ann. §14-40-2002 after the adoption of this Ordinance toward making the ErnestCa/2019Misc/ORDSteele

requested services available to the Property, and within each 30 day period thereafter, to continue to take steps demonstrating a consistent commitment to make the requested sanitary sewer services available to the Property within a reasonable time; and,

**WHEREAS,** upon the City of Springdale making the commitment to make the requested municipal services available to the Property, Steele now seeks approval of the request for detachment from Bethel Heights and annexation into the City of Springdale, Arkansas, pursuant to Ark. Code Ann. §14-40-2002.

# NOW, THEREFORE, BE IT ORDAINED, BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS:

**SECTION 1:** The City of Springdale, Arkansas hereby makes a commitment to make the requested municipal services available to the Property, and to take substantial steps within the time required by Ark. Code Ann. §14-40-2002 after the passage of this ordinance to make the requested municipal services available and, within each thirty-day period thereafter, continue taking steps demonstrating a consistent commitment to make the additional services available within a reasonable time, as determined by the kind of services requested.

**SECTION 2:** Given the commitment made by the City of Springdale, Arkansas, to make the requested municipal services available, the Property is therefore accepted for annexation into the City of Springdale, Arkansas, pursuant to Ark. Code Ann. §14-40-2002, and the Property shall hereafter be a part of the City of Springdale, effective upon the date indicated below.

Arkansas.	nereby assigned to Ward	of the City of Springdale,
PASSED AND APPROVED this	day of	, 2019.
ATTEST:	Doug Sprouse, Mayor	
Denise Pearce, City Clerk		
APPROVED AS TO FORM:		
Ernest B. Cate, City Attorney		
j	Legal Description	

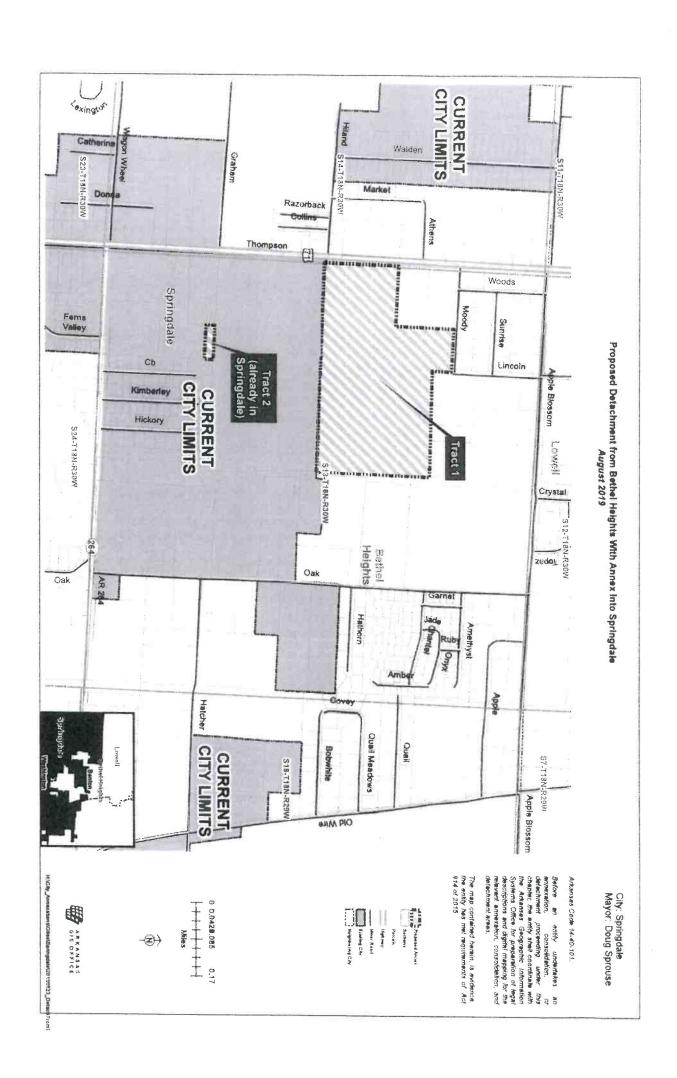
The East Half of the NW 1/4 of the SE 1/4, the West Half of the NE 1/4 of the SE 1/4, the West Half of the NW 1/4 of the SE 1/4, the South Half of the East Half of the NE 1/4 of ErnestCa/2019Misc/ORDSteele

the SE 1/4, the North Half of the East Half of the NE 1/4 of the SW 1/4, as tract of land 20 feet of equal and uniform width off the East of the South Half of the East Half of the NE 1/4 of the SW 1/4, and the East Half of the SW 1/4 of the SE 1/4, all lying in Section 14, Township 18 North, Range 30 West, Benton County, Arkansas.

Less and except that portion of subject property deeded to the Arkansas State Highway Commission in Warranty Deed filed February 13, 1974, in Deed Record 471 at Page 317, records of Benton County, Arkansas.

Less and except a strip of land 20' of equal and uniform width taken from the northern boundary of the above described property. Said boundary also being the north line of the SW/4 of Section 14, Township 18 North, Range 30 West, and the north line of the SE/4 of Section 14, Township 18 North, Range 30 West.

Also, less and except a strip of land 20' of equal and uniform width taken from the western most boundary of the above described property. Said boundary also being the west line of the N/2 of the E/2 of the NE/4 of the SW/4 of Section 14, Township 18 North, Range 30 West."



2004 11730 Recorded in the Above Geed Book & Page 03-04-2004 11:57:31 AM Brends DeShields-Circuit Clerk Benton County. AR Book/Pag 2004/11730

Book/Pa: 2004/11730 Tern Cashier: CIRC1000 / SDUNCAN Tran: 1597.52754.141181 Recorded: 03-24-2004 11:57:51 OFF Deed REC Recording Fee Tabs: Fees: \$ 11.00

11.00

# WARRANTY DEED (Correction Deed)

# KNOW ALL MEN BY THESE PRESENTS:

I, the undersigned, being the duly appointed, qualified and acting Trustee of the Phillip W. Steele Family Trust u/t/d May 14, 1991, hereinafter called Grantor, pursuant to the power and authority granted therein as evidenced by the Memorandum of Trust filed herewith, and for Ten Dollars (\$10.00) and other valuable consideration to me paid by P&C Steele Properties, LLC, an Arkansas limited liability company, hereinafter called Grantee, the receipt of which is hereby acknowledged, do hereby GRANT, BARGAIN, SELL and CONVEY unto the said Grantee, and unto Grantee's heirs and assigns forever, the following-described lands situated in Benton County, Arkansas:

This deed is given for the purpose of correcting certain errors in the description contained in a certain deed dated December 2, 2003 which now appears of record in the office of the Circuit Clerk and Ex-Officio Recorder of Benton County, Arkansas, as document number 2003-36229, and all warranties under this Correction Warranty Deed shall have an effective date of December 2, 2003.

Tract 1: Part of the NW 1/4 of the NW 1/4 and part of the SW 1/4 of the NW 1/4 and part of the SE 1/4 of the NW 1/4 all in Section 13, T 18 N, R 30 W of the Fifth Principal Meridian in Benton County, Arkansas being more particularly described as follows, to-wit: Commencing at the Southeast Corner of the NE 1/4 of the SW 1/4 of said Section 13, thence S 89 degrees 56'31" W 50.00 feet, thence N 0 degrees 18'41" W 1320.08 feet to the POINT OF BEGINNING, thence S 89 degrees 56'31" W 2537.30 feet to the East Right-of-Way for Highway 71, thence NORTH along said EAST right-of-way N 0 degrees 14'14" W 890.72 feet, thence S 89 degrees 24'40" E 736.23 feet, thence NORTH 710.00 feet to the SOUTH Right-of-Way for Moody Avenue, thence along the SOUTH Right-of-Way S 88 degrees 49'55" E 515.64 feet to the WEST Right-of-Way for a County Road, thence along said WEST Right-of-Way S 0 degrees 04' 40" W 234.50 feet, thence N 89 degrees 13'18" E 1287.61 feet to the WEST Right-of-Way for the St. Louis-San Francisco Railroad, thence along said WEST Right-of-Way S 0 degrees 05'15" E 1363.05 feet to the POINT OF BEGINNING; Containing 73.80 Acres more-or-less subject to any additional easements and Rights-of-Ways not listed herein.

Already in Springdaie



Tract 2: A part of the Southwest Quarter of the Southwest Quarter of Section Thirteen (13), Township Eighteen (18) North, Range Thirty (30) West, described as: Beginning at the Northeast corner of said forty acre tract and running thence West 418 feet; thence South 104 feet; thence East 418 feet; thence North 104 feet to the place of beginning.

Subject to easements, rights-of-way and restrictive covenants of record, if any.



A Division of the Department of Transformation and Shared Services

August 23, 2019

Atty. Bill Watkins Watkins, Boyer, Gray & Curry, PLLC 1106 W. Poplar Rogers, AR 72756

RE: Detachment from Bethel Heights w/Annex into Springdale

Mr. Watkins,

Thank you for coordinating with our office as you seek to detach property from the City of Bethel Heights, AR and annex into the City of Springdale, AR located in Section 13, Township 18 North, Range 30 West. This letter represents confirmation that you have properly coordinated with our office (Arkansas GIS Office) as specified in § 14-40-101 (Act 914 of 2015) of the  $90^{th}$  General Assembly.

Our office will wait completion of any additional steps necessary for the proposed boundary change, which normally comes from the Arkansas Secretary of State Elections Division after any appropriate filing by your County Clerk.

Thank you,

Jennifer Wheeler, GIS Analyst /jw

Attachments: GIS Office Map of Proposed Annexation Legal Description Secretary of State Municipal Change Checklist

 $H:\City\_Annexations\\\Cities\\\Springdale\\\20190823\_DetachFromBethelHeights\\\Springdale\_Annexation\_Coordination\_Letter.docx$ 

ARKANSAS GIS OFFICE + 1 CAPITOL MALL SUITE 6D + LITTLE ROCK + ARKANSAS + 72201 PHONE (501) 682-2767 + www.gis.arkansas.gov